

IN THE MATTER OF	:	BEFORE THE
TIM AND SUSAN MAKO	:	HOWARD COUNTY
Petitioners	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-006V

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DECISION AND ORDER

On April 7, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Tim and Susan Mako for a variance to reduce the recorded 75-foot side setback to 40 feet for a swimming pool in an RC-DEO (Rural Conservation-Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The property owners Tim and Susan Mako testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is located in the 3rd Election District at the southeast intersection of Underwood Road and Pipes Lane and is also known as 1731 Underwood Road (the "Property"). The

Property is identified on Tax Map 9, Grid 21, as Parcel 300, Lot 15, Section 1 and is zoned RC-DEO (Rural Conservation-Density Exchange Option).

2. The generally rectangular, corner .96-acre Property is part of the Annandale subdivision recorded in May 1977. As recorded, the Property fronts on Pipes Lane, and has a recorded 75-foot front building line, as do the adjacent properties fronting on Pipes Lane. However, the dwelling on the Property fronts on, and is accessed from Underwood Road, which has a recorded 40-foot building restriction line.

3. The two-story, single-family dwelling is situated at an angle to Underwood Road near or on the northern 75-foot building restriction line (the "75-foot B.R.L."). A rear patio extends into this setback. A garage attached to the dwelling's front right side also sits at an angle to Underwood Road. Much of the southern area of the building envelope is taken up by the septic field. A well is situated in the Property's northeast corner. Access to the property is obtained by an asphalt drive off Underwood Road.

4. Vicinal properties. Adjacent properties are zoned RC-DEO and are improved with single-family detached dwellings. The Property's southern lot line borders on a future drive/road.

5. The Petitioners are proposing to construct an irregularly shaped swimming pool next to the patio and to the dwelling's side and rear. The pool would thus lie some 10-12 feet into the 75-foot B.R.L. They are therefore seeking a reduction in the 75-foot B.R.L. to 40 feet.

6. The Petitioners testified to having first sought to locate the pool in the southern section of the Property but that the County informed them the area is reserved for the septic field.

7. Comments from the Department of Planning and Zoning's Division of Public Service and Zoning Administration note that the current setback from a front lot line is 50 feet. Section 104.E.4.b(3).

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I conclude the requested variance complies with Section 130.B.2.a and may therefore be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651

A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

2. With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.

North v. St. Mary’s County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Property is narrower than neighboring properties along Pipes Lane and is bounded on three sides by public roads. This condition results in practical difficulties in complying strictly with the setback requirements of the Zoning Regulations for properties within the RC-DEO zoning district, in accordance with Section 130.B.2.a(1).

3. The granting of the variance will enable the Petitioner to construct a reasonably sized swimming pool, which is typically found in the zone. The 75-foot B.R.L. was intended as a front setback and the current front setback is now 50 feet and only 30 feet for a side setback. I therefore conclude the Property’s narrowness is a unique physical condition. The nature and intensity of the use will not be changed. I therefore conclude the variance, if granted, will not alter the character of the neighborhood in which the Property is located, nor substantially impair

the appropriate use or development of adjacent property, nor be detrimental to the public welfare as required by Section 130.B.2.a(2).

4. The practical difficulty in complying strictly with the setback regulations arises from the Property's unique locale and the location of the septic field on the Property, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

5. The variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **21st day of April 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Tim and Susan Mako for a variance to reduce the 75-foot recorded building restriction line from Pipes Lane to 40 feet, in order to construct a swimming pool in an RC-DEO (Rural Conservation-Density Exchange Option) zoning district is **GRANTED**.

Provided, however, that:

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioners shall install a Type B landscape buffer extending the length of Pipes Lane and extending along Underwood Road from Pipes Lane to the 75-foot recorded building restriction line.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 4/22/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.